

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 95-795-C & 95-796-C - ORDER NO. 95-1329 ✓

JULY 5, 1995

IN RE:	Joint Application of Dial Page, Inc.)	
	and MobileMedia Communications, Inc.)	
	for Approval to Transfer Radio Common)	
	Carrier Property, Powers, Franchises)	ORDER
	and Privileges.)	APPROVING
)	TRANSACTIONS
IN RE:	Joint Application of Dial Page, Inc.)	
	and NEXTEL Communications, Inc. for)	
	Approval of Merger and for Certain Other)	
	Relief.)	

This matter comes before the Public Service Commission of South Carolina (the Commission) upon the Application of Dial Page, Inc. and MobileMedia Communications, Inc. in Docket No. 95-795-C, wherein the parties seek approval for the transfer of Dial Page, Inc.'s (Dial Page's) Radio Common Carrier Certificate of Public Convenience and Necessity, and the sale of the assets of its radio common carrier business to MobileMedia DP Communications, Inc. A separate Application was filed by Dial Page, Inc. and NEXTEL Communications, Inc. in Docket No. 95-796-C, seeking approval for Dial Page's merger into and with NEXTEL Communications and for certain other relief. Upon motion by the Staff of the Commission, the Commission consolidated the two dockets for hearing purposes by Order No. 95-1203, dated June 9, 1995.

By letters dated April 27, 1995, the Applicants were directed to publish Notices with respect to each docket in newspapers of general circulation in the areas served by Dial Page, Inc. once,

and to file proof of publication with the Commission on or before May 8, 1995. Affidavits of Publication filed with the Commission on or about May 10 confirm compliance with this requirement. No Petitions to Intervene or Protests were received. In Order No. 95-967, the Commission established deadlines for the pre-filing of testimony and exhibits by the Applicants and Staff. The consolidated dockets were heard at a hearing convened at 11:30 a.m. on June 21, 1995, with the Honorable Rudolph Mitchell, Chairman, presiding. The Applicants were represented by Arthur G. Fusco, Esquire, and the Staff was represented by F. David Butler, General Counsel. Michael D. Layman testified on behalf of the Applicants. There were no witnesses for the Staff.

FINDINGS OF FACT AND CONCLUSIONS OF LAW AS TO DOCKET NO. 95-795-C

While the applicants sought approval of several specific actions, the underlying transaction requiring this Commission's approval is the sale by Dial Page, Inc. of its radio common carrier assets to MobileMedia DP Communications, Inc. Dial Page, Inc. (Dial Page) holds a Certificate of Public Convenience and Necessity to provide radio common carrier service to customers in most of South Carolina. S.C. Code Ann. §58-11-140 (1976, as amended) requires a radio common carrier to obtain the Commission's approval prior to selling, transferring, consolidating, or merging its property, powers, franchises or privileges used directly in the radio common carrier business. On February 17, 1995, Dial Page and MobileMedia Communications, Inc. executed a Purchase Agreement, in which Dial Page agreed to sell, and MobileMedia Communications, Inc. agreed to purchase, all of Dial Page's paging and messaging

business, including the assets in South Carolina and to transfer Dial Page's South Carolina Certificate of Public Convenience and Necessity for its radio common carrier business. The purchase price is to be paid in cash and by assumption of certain of Dial Page's debt. After the purchase and sale is closed, MobileMedia Corporation (the holder of the stock of MobileMedia Communications, Inc. and MobileMedia DP Communications, Inc.) will continue Dial Page's paging and messaging business in South Carolina and elsewhere through one or more subsidiary corporations. The complexities of present-day tax, corporate, securities and financing law, together with the existing business and financial structure of the parties, however, combine to require that this transaction be accomplished through a series of intermediate steps, some of which require the Commission's specific approval.

The central question this Commission must determine is whether Dial Page's sale of its regulated business serves the convenience and necessity of the public in the State of South Carolina. After considering the evidence, the Commission finds that the sale does serve the public convenience and necessity. For convenience in the remainder of the Order, unless the context clearly requires otherwise, references to "MobileMedia" shall include MobileMedia Corporation and its subsidiaries, MobileMedia Communications, Inc. and MobileMedia DP Communications, Inc. MobileMedia is owned and controlled by private investors, and was created in 1993 to acquire the paging and messaging business of Southwestern Bell Corporation. Since the purchase of that system, MobileMedia acquired only limited operations in the Southeast, however, and for this reason

found the purchase of Dial Page's paging and messaging business an attractive opportunity to expand in the Southeast. Financial information submitted by MobileMedia as evidence indicates that MobileMedia is financially qualified to maintain the level of service presently provided by Dial Page to its South Carolina customers, and to provide new or enhanced services to customers in the future. The legal qualifications and ability of MobileMedia and its owners to provide public and private telecommunications services have been evaluated by the Federal Communications Commission, which approved the acquisition of Southwestern Bell's paging authorizations in 1993. In addition, the Federal Communications Commission has granted cellular and other telecommunications authorizations to MobileMedia's owners, in each case only after assuring that the owners satisfied the requirements of the Communications Act of 1934 and Federal Communications Commission rules and regulations.

After reviewing the evidence, the Commission believes that MobileMedia is fully qualified and able to serve Dial Page's South Carolina customers and the public convenience and necessity. MobileMedia seeks approval in this proceeding to acquire Dial Page's existing business, and is not seeking an expansion of its service area, nor any increase in rates. After the purchase, MobileMedia will continue Dial Page's service to provide uninterrupted continuity of service to the public. Therefore, the Commission finds that the purchase of Dial Page's radio common carrier assets and the transfer of the Certificate of Public Convenience and Necessity will serve the public and be for the

convenience and necessity of the citizens of South Carolina, and therefore approves Dial Page's sale of its assets and the transfer of its South Carolina Certificate of Public Convenience and Necessity as required by S.C. Code Ann. §58-11-140 (1976, as amended). This approval would dispose of this docket but for the matters addressed in Docket No. 95-796-C, the joint application of Dial Page and NEXTEL Communications, Inc.

FINDINGS OF FACT AND CONCLUSIONS OF LAW AS TO DOCKET NO. 95-796-C

On February 17, 1995, Dial Page and NEXTEL Communications, Inc. ("NEXTEL") executed an Agreement of Merger and Plan of Reorganization, pursuant to which Dial Page will be merged with and into NEXTEL, which will be the surviving corporation. As a result, Dial Page's separate legal existence will end. Dial Page and NEXTEL filed a joint application in Docket No. 95-796-C for several reasons. First, there was no certainty that the sale of Dial Page's paging and messaging business to MobileMedia would be closed before the Dial Page/NEXTEL merger occurred. If the Dial Page/NEXTEL merger is consummated before the sale of Dial Page's paging and messaging business to MobileMedia, South Carolina law requires Dial Page (as a radio common carrier) to obtain Commission approval of the merger of Dial Page with and into NEXTEL. See Section 58-11-140, previously discussed. Second, in the remote event that Dial Page's sale of its paging and messaging business to MobileMedia fails to close, Dial Page cannot complete the merger with and into NEXTEL unless it obtains Commission approval. Third, tax and other business factors make it desirable to complete the Dial Page/NEXTEL merger before or simultaneously with the sale of

Dial Page's regulated paging assets to MobileMedia.

As part of the plan to consummate the merger with NEXTEL prior to the sale of the paging assets to MobileMedia DP Communications, Inc., Dial Page has created The Dial Page Trust. The trustees are Jeffrey R. Hultman, Thomas A. Grina, and William J. West, each of whom is a senior executive of Dial Page. The terms of The Dial Page Trust permit Dial Page to revoke the trust at any time and for any or no reason, to amend the trust in any manner, and to remove or replace one or more of the trustees at any time. Dial Page is the sole beneficiary of The Dial Page Trust. If the NEXTEL merger closes before the sale of the paging assets, Dial Page will fund the trust with the paging assets, and after the merger is effected, the sale of the paging assets will take place.

The trust serves two purposes. First, the trust will segregate the paging assets and liabilities from NEXTEL's direct ownership and responsibility, since the parties believe that a trust indenture to which NEXTEL is a party may be violated if NEXTEL becomes directly responsible for Dial Page's paging liabilities as would occur by operation of law in the merger without interposition of the trust. Second, the trust is helpful in assuring compliance with certain technical requirements of the Communications Act of 1934. If the NEXTEL merger closes before the sale of the paging assets, NEXTEL will momentarily succeed to Dial Page's beneficial interest in the trust and to Dial Page's other rights and obligations under the trust agreement, with the sale of the paging assets being accomplished almost simultaneously. If the merger does not take place before the paging assets are sold, Dial

Page may elect to fund the trust only with Federal Communications Commission authorization and sell the paging assets directly to MobileMedia DP Communications, Inc.

Dial Page seeks a finding that the creation and funding of The Dial Page Trust is not a transaction requiring the Commission's approval under Chapter 11, Title 58, or other applicable South Carolina law. Since The Dial Page Trust is fully revocable at any time, since the trust may be amended at any time and in any manner, since Dial Page is the sole absolute beneficiary, and since Dial Page has the unfettered right to remove or replace the trustee or trustees, we believe the creation and funding of The Dial Page Trust is not a transaction requiring the approval of this Commission, in that there is no change of control of beneficial ownership of the assets comprising the radio common carrier system.

The Commission has previously held that a realignment or reorganization of a regulated entity involving no transfer of control or change in beneficial ownership of regulated assets is not a transaction requiring approval of the Commission after notice and hearing. The Commission believes that the creation and funding of The Dial Page Trust, as described by the parties, is similar, and holds that this transaction does not require such approval. Likewise, since the Commission approves the merger of Dial Page into NEXTEL as required by law, the nature of The Dial Page Trust remains the same after the merger, with NEXTEL simply succeeding to Dial Page's rights under the trust agreement.

FINDINGS OF FACT AND CONCLUSIONS OF LAW AS TO MOBILEMEDIA'S
FINANCING TRANSACTIONS

In addition to matters related directly to the approval of the sale of the paging assets and the merger of Dial Page into NEXTEL, MobileMedia has requested Commission consideration and any required approvals of two ancillary matters. MobileMedia has no operations in the State of South Carolina at present, and thus is not a "radio common carrier" subject to the Commission's jurisdiction. However, upon closing of the purchase of Dial Page's paging assets, MobileMedia will become subject to the Commission's jurisdiction as a "radio common carrier." Certain actions undertaken by radio common carriers are permitted by law only after approval by this Commission. MobileMedia, in anticipation of the closing of its purchase of Dial Page's paging assets, has sought the Commission's approval of certain financing, as required by S.C. Code Ann. §58-11-240 (1976, as amended). Also, MobileMedia has sought the Commission's review of a proposed realignment of its corporate structure after the closing, again in anticipation of its becoming a radio common carrier subject to Commission jurisdiction.

As an integral part of the transfer of paging assets from Dial Page to MobileMedia, MobileMedia Communications entered into a Credit Agreement with the Chase Manhattan Bank and other lenders dated as of May 4, 1995 (the "Credit Agreement"). On May 31, 1995, MobileMedia Communications, Inc. filed with the Commission a request that the Commission approval in Docket No. 95-795-C include not only authorization to complete the acquisition of Dial Page's paging assets, but also ratification of the financial aspects of

the transfer, including the Credit Agreement. S.C. Code Ann. §58-11-240 (1976, as amended) requires that a radio common carrier obtain a Certificate of Authority from the Commission before issuing securities or most debt instruments, including the promissory notes contemplated by the Credit Agreement. MobileMedia filed the Credit Agreement, Securities and Exchange Commission Form 10-K for the year ended December 31, 1994, and a statutory verification with the Commission June 2, 1995. The Credit Agreement is subject to a Confidentiality Agreement with the Commission Staff. Based upon the record in this matter, including the application of MobileMedia for approval of the Credit Agreement, the Credit Agreement, the Statutory Verification, and the testimony presented, the Commission finds that the Credit Agreement is for a proper purpose, and that the value of the property to be obtained from the proceeds of the Credit Agreement exceeds the debt assumed under the terms thereof. In addition, the Commission finds that the debt is reasonably necessary for the purpose for which the Credit Agreement has been undertaken.

FINDINGS OF FACT AND CONCLUSIONS OF LAW AS TO MOBILEMEDIA'S

REORGANIZATION

The other matter for which MobileMedia has sought the Commission's consideration is a post-closing realignment of certain wholly-owned subsidiaries of MobileMedia Corporation. MobileMedia Corporation has formed a wholly-owned subsidiary named MobileMedia DP Communications, Inc. for the sole purpose of completing the purchase of Dial Page's paging assets. Another wholly-owned subsidiary of MobileMedia Corporation, MobileMedia Communications,

Inc., owns and operates the presently-owned paging business acquired from Southwest Bell. After closing of the Dial Page purchase, MobileMedia seeks to combine MobileMedia DP Communications, Inc. and MobileMedia Communications, Inc. into a single corporation, thereby consolidating the company's paging business and operations into a single entity. MobileMedia has sought this Commission's views on the application of South Carolina law to this planned consolidation. This Commission has previously held that a consolidation or realignment of wholly-owned subsidiaries which does not involve or require a change of control of the regulated assets or a change in beneficial ownership of the regulated assets does not require Commission approval after notice and a hearing.

Based upon the plan, as outlined and represented to the Commission, the Commission believes that MobileMedia's planned consolidation of MobileMedia DP Communications, Inc. and MobileMedia Communications, Inc. into a new corporate entity is such an internal realignment or reorganization not requiring a separate proceeding after notice. The reorganization involves no change of control of the regulated assets, since the ultimate control of the assets rests with MobileMedia Corporation before and after the realignment. Likewise, the beneficial ownership of the regulated assets remains in MobileMedia Corporation both before and after the planned transactions. Therefore, MobileMedia may proceed with its planned reorganization after the closing of the Dial Page purchase, provided that MobileMedia shall file with the Commission, as soon as practicable after completing the reorganization, written

notice identifying the entity into which MobileMedia DP Communications, Inc. and MobileMedia Communications, Inc. have been combined, and making any necessary amendments to its tariff to change the name of the entity operating the paging business in South Carolina.

BASED UPON THE foregoing findings of fact and conclusions of law,

IT IS HEREBY ORDERED:

1. The acquisition by MobileMedia DP Communications, Inc. of the radio common carrier business and assets of Dial Page, Inc., including the Certificate of Public Convenience and Necessity now be held by Dial Page, Inc., is hereby approved as required by S.C. Code Ann. §58-11-140 (1976, as amended).

2. The creation and funding of The Dial Page Trust, as described in this Order, and the merger of Dial Page, Inc. prior to the sale of Dial Page's, Inc.'s radio common carrier assets into NEXTEL Communications, Inc. is hereby approved as required by S.C. Code Ann. §58-11-240 (1976, as amended). The parties are not required by this Order to complete the merger of Dial Page, Inc. into NEXTEL Communications, Inc., but should the parties choose to complete the merger prior to the sale of the paging assets, they are authorized by this Order to do so.

3. MobileMedia DP Communications, Inc. and any successor entity resulting from consolidating of MobileMedia DP Communications, Inc. and MobileMedia Communications, Inc. as described in this Order, is hereby authorized to provide radio common carrier service in those areas of the State of South

Carolina in which Dial Page, Inc. now provides such service pursuant to its Certificate of Public Convenience and Necessity after acquiring the paging assets of Dial Page, Inc. MobileMedia DP Communications, Inc. or its successor shall comply with applicable law before seeking to provide, or providing, radio common carrier service in areas of the State of South Carolina in which Dial Page, Inc. is not authorized to provide such service by its Certificate of Public Convenience and Necessity.

4. This Order shall be considered the Certificate of Authority required by S.C. Code Ann. §58-11-240 (1976, as amended), allowing MobileMedia Communications, Inc., and its successor entity resulting from consolidation of MobileMedia DP Communications, Inc., and MobileMedia Communications, Inc. to enter into and perform its obligations under the Credit Agreement described herein. To the extent necessary, the assumption and performance of Dial Page's obligations under debt instruments assumed by MobileMedia DP Communications, Inc. and its successor entity resulting from consolidation of MobileMedia DP Communications, Inc. and MobileMedia Communications, Inc. under the Purchase Agreement is approved, and this Order shall be considered the Certificate of Authority required by S.C. Code Ann. §58-11-240 (1976, as amended) for those purposes.

5. The combination of MobileMedia DP Communications, Inc. and MobileMedia Communications, Inc., as described in this Order is hereby approved, provided that the new entity resulting from the consolidation shall file with this Commission, as soon as practicable after the consolidation, written notice of the name of

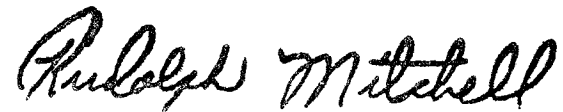
the new entity and take such further reasonable actions as are necessary to assure that the records of the Commission correctly reflect the new name.

6. The tariff of Dial Page, Inc. on file with the Commission shall be the tariff of MobileMedia DP Communications, Inc. and the successor entity, unless and until MobileMedia DP Communications, Inc. or its successor shall take the actions required by applicable law to amend or alter the terms of the tariff. This Order shall not be construed to permit changes to tariff provisions without compliance with applicable laws.

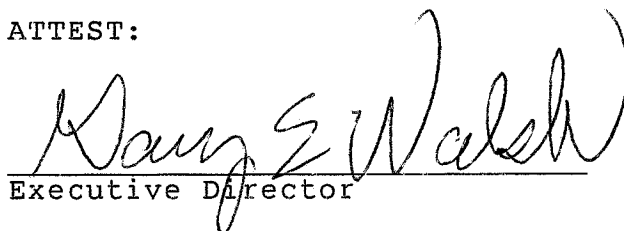
7. This Order shall not, in any way, affect or limit the right, duty or jurisdiction of the Commission to further investigate and order revisions, modifications or changes with respect to any provision of this Order in accordance with the law.

8. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Deputy Executive Director

(SEAL)